

1 and documents. *See generally Press–Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1985).
2 In the Ninth Circuit, there is a “strong presumption in favor of access to court records” in both civil
3 and criminal actions, which can only be overridden if there are “sufficiently compelling reasons for
4 doing so.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003); *see also*
5 *Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (a motion to seal documents
6 which are part of the judicial record is governed by the “compelling reasons standard”). Even when
7 documents subject to a protective order are filed under seal as attachments to a dispositive motion,
8 the Ninth Circuit applies the compelling reasons standard. *See Foltz v. State Farm Mut. Auto. Ins.*
9 *Co.*, 331 F.3d. 1122, 1136 (9th Cir. 2003).² To meet the compelling reasons standard, a party needs
10 to provide “articulable facts” on which the court could base a decision to seal portions of the record.
11 *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1181 (9th Cir. 2006)

12 Even the Confidential Information Order relied upon by the Plaintiff provides that “[a]s there
13 is a presumption in favor of open and public judicial proceedings in the federal courts, this Order
14 will be strictly construed in favor of public disclosure and open proceedings whenever possible.”
15 Confidential Information Order at ¶1, ECF No. 27. It also noted that “[i]nformation or documents
16 that are available to the public may not be designated as Confidential Information.” *Id.* at ¶2.

17 The court has reviewed the Plaintiff’s Opposition and the declarations appended thereto (ECF
18 No. 42) and the Concise Statement and exhibits (ECF No. 43) and finds that many portions of said
19 documents contain facts that are already available to the public and/or legal argument, which should
20 be sealed from the public.³ The Plaintiff has not articulated any facts that justify the wholesale
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22 ² The *Foltz* court recognized that an exception to the presumption of access had been carved
23 out for materials attached to a nondispositive motion filed with the court under seal pursuant to a
24 valid protective order. *Foltz*, 331 F.3d at 1135. The Ninth Circuit “reasoned that the presumption
25 of access was rebutted because ‘[w]hen a court grants a protective order for information produced
26 during discovery, it already has determined that “good cause” exists to protect this information from
being disclosed to the public by balancing the needs for discovery against the need for
confidentiality.’” *Id.* (citing *Phillips v. Gen. Motors*, 307 F.3d 1206, 12 13 (9th Cir. 2002).

27 ³ The court has temporarily allowed ECF Nos. 42 and 43 to be filed under seal, but as
28 discussed *infra*, the court will give the Plaintiff an opportunity to show cause why the court should
not unseal said documents.

1 sealing of the documents referenced above in their entirety, particularly when redactions can be made
2 to protect personal identifiers (*e.g.* social security numbers, dates of birth, home addresses and
3 telephone numbers) or other sensitive information (*e.g.*, financial information and records, personnel
4 records, criminal histories), such as the Defendants did when the Motion for Summary Judgment and
5 documents in support thereof were filed.

6 The court orders the Plaintiff to review ECF Nos. 42 and 43 and make any redactions
7 necessary to prevent public access to personal identifiers (*e.g.* social security numbers, dates of birth,
8 home addresses and telephone numbers) or other sensitive information (*e.g.*, financial information
9 and records, personnel records, criminal histories). If any document or exhibit requires redaction,
10 the Plaintiff shall submit said redacted document or exhibit(s) *over the counter* at the Clerk's Office
11 no later than Friday, June 18, 2021, at 3:00 p.m., along with an explanation of why said document
12 or exhibit is being redacted. If, after careful review, the Plaintiff still believes that a specific
13 document or exhibit cannot be appropriately redacted and must remain sealed, then the Plaintiff shall
14 also file an amended motion to seal that sets forth articulable facts – not conclusory statements –
15 identifying the interests favoring continued secrecy and explain how these specific interests
16 overcome the presumption of public access.

17 The Defendants shall thereafter review the Plaintiff's redacted documents and/or documents
18 the Plaintiff requests to be sealed in their entirety and file by June 30, 2021, either a concurrence or
19 an opposition to the Plaintiff's redactions and/or sealing requests. If necessary, the Plaintiff shall
20 have until July 7, 2021, to respond any comments made by the Defendants.

21 IT IS SO ORDERED.



22 /s/ **Michael J. Bordallo**
23 **U.S. Magistrate Judge**
24 **Dated: Jun 03, 2021**
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